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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,127	08/30/2006	Jacques Thomasset	2590-167	7341

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EXAMINER	
WOOD, ELLEN S	

ART UNIT	PAPER NUMBER
1782	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/591,127	THOMASSET, JACQUES	
	Examiner	Art Unit	
	ELLEN S. WOOD	1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 June 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *04/15/2010; 11/24/2009*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawaguchi (US 5,403,529) in view of Akiyama et al. (US 2002/0182351, hereinafter "Akiyama").

Kawaguchi discloses a method and equipment for forming a composite resin material comprising an outer synthetic resin layer and an inner synthetic resin layer (functional layer) enveloped by the outer synthetic resin layer (col. 1 lines 7-9). The length of the inner synthetic resin is reduced (col. 2 lines 58-60). The inner synthetic resin layer is enveloped by the outer composite synthetic resin material (col. 3 lines 28-31). The inner synthetic resin is preferably of a type possessing superior gas barrier properties (col. 5 lines 63-64). An intermediate synthetic resin is extruded that is preferably of a type having suitable adhesion with the outer synthetic resin and the inner synthetic resin (col. 6 lines 1-8). The length of composite synthetic resin in which the inner synthetic resin does not exist is increased (col. 10 lines 37-39). Thus, the functional layer is closed on both ends.

In regards to claim 7, Kawaguchi discloses that the outer synthetic resin is extruded continuously from extruder 20 (col. 8 lines 34-36 and fig. 6). The inner,

intermediate and forced synthetic resin are forced to flow intermittently under pressure into main channel 8 while the outer synthetic resin continues to flow in main channel 18 (col. 8 lines 38-50). The flow is periodically cut (col. 11 lines 58-62). The cut composite synthetic resin is removed and carried into a compression molding pattern (col. 10 lines 63-67). Thus, the portions are deformed once they are in the mold.

Kawaguchi is silent with regards to the distance of the shortened inner layer.

In regards to claims 1-5, Akiyama discloses a multilayer parison which is the claimed "dose" of the applicant [0122]. The parting line (23) is defined as the axis of symmetry [fig. 11 0118]. A multilayer parison (dose) is formed from co-extruding resins to form a multilayer flow [0122]. The resin layers comprise a cylindrical outer layer, a cylindrical inner layer located inside the outer layer, a pair of the vertical slip-like adhesive layers disposed in axial symmetry on the parting line, and the cylindrical ring-like adhesive layer that is disposed between the outer layer and the inner layer intermittently at a predetermined interval [0122 and fig. 11]. Figure 11 shows a body of revolution defined about a said axis of symmetry (23), the body of revolution comprises two ends disposed in a direction parallel to the axis of symmetry (fig. 11). The layers consist of inner and outer layers of PET with a middle layer of polyamide or ethylene vinyl alcohol [0111 and fig. 7]. The polyamide or ethylene vinyl alcohol is imprisoned between two layers of adhesive resin [0111 and fig. 7]. Thus, the functional layer is the barrier layer imprisoned between the two layers of adhesive resin. It is known to one of ordinary skill in the art that ethylene vinyl alcohol and polyamide are commonly known barrier resins used in packages and containers.

While there is no disclosure that the dose/parison is formed before any compression molding as presently claimed, applicants attention is drawn to MPEP 2111.02 which states that "if the body of a claim fully and intrinsically sets forth all the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction". Further, MPEP 2111.02 states that statements in the preamble reciting the purpose or intended use of the claimed invention must be evaluated to determine whether the purpose or intended use results in a structural difference between the claimed invention and the prior art. Only if such structural difference exists, does the recitation serve to limit the claim. If the prior art structure is capable of performing the intended use, the it meets the claim.

It is the examiner's position that the preamble does not state any distinct definition of any of the claimed invention's limitations and further that the purpose or intended use, i.e. for realization of an object before compression molding, recited in the present claims does not result in a structural difference between the presently claimed invention and the prior art parison/dose and further that the prior art structure which is a parison/dose identical to that set forth in the present claims is capable of performing the recited purpose or intended use.

In regards to claim 6, Akiyama discloses that the object obtained formed from the parison has an inner face and outer face, where the inner part of the packaging [0111]. The object is formed from the multilayer structure of the varying resin layers [0111 and

fig. 7]. The functional layer is imprisoned in the wall and forms a fold, wherein the functional layer is not contained within the inner face [0111 and fig. 7].

In regards to claims 7-11, Akiyama discloses a multilayer parison production method is where resins are coextruded as to form a multilayer flow and said flow being periodically cut so as to form individual parisions [0122-0124]. The flow is pinches off the multi-layer parison during the cutting, thus the parison portions are deformed in a way to cover the barrier and adhesive layers within the PET layer [0124].

Akiyama is silent with regards to the compression molding, the distance of the functional layers from the surface of the parison, the characteristics of the functional layer and were the portions are defomed during the method.

Akiyama discloses blow molding the parisions [0126]. It would be obvious to one of ordinary skill in the art that containers can be formed using a wide variety of differing methods. The parison used for these methods would be similar because the object is to shape the parison to form a container with multiple layers. Thus, the compression molding is intended use of the parisons.

Akiyama discloses that barrier and adhesive layers are disposed at a predetermined interval [0122]. Thus, it would be obvious to one of ordinary skill in the art at the time of the invention to use the predetermined intervals of the barrier and adhesive layers of Akyama with the construction of the multilayer composite synthetic resin material of Kawaguchi, because the spacing of the functional layer in comparison to the surface of the parison and whether the ends are open or closed would be

determined by routine experimentation in order to produce the most effective parison that will easily shape into a container that exhibits proper barrier properties.

Response to Arguments

3. Applicant's arguments filed 06/03/2010 have been fully considered but they are not persuasive.

4. The applicant argues that one of ordinary skill in the art would not be motivated to combine the references of Kawaguchi and Akiyama, because Akiyama is directed towards a parison.

In response, Kawaguchi discloses a dose. The dose has a similar structure to the dose claimed in claim 1. Although Kawaguchi does not provide the length of the inner layer the length would be determined by routine experimentation. One of ordinary skill in the art would optimize the length of the inner layer to maximize the barrier properties for the final product of a container. Akiyama provides the teaching of an article formed from a multilayer flow. Akiyama does not explicitly teach that the parison is formed from compression molding. Thus, the parison that is disclosed in Akiyama meets the definition of a dose according to applicant's specification. One of ordinary skill in the art would be motivated to combine Kawaguchi and Akiyama, because they are both directed towards intermediate products that are used to formed the final product, such as a container. When a work is available in one field, design incentives and other market forces can prompt variations of it, either in the same field or in another. *KSR* at 1396. If a person of ordinary skill in the art can implement a predictable

variation, and would see the benefit of doing so, § 103 likely bars its patentability. *Id.* Moreover, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill. *Id.*

One of ordinary skill in the art at the time the invention was made, when viewing the state of the art and the predictable improvements in structures known in the art, would be motivated to improve the dose of Kawaguchi, of the prior art, with the processes and structure taught by Akiyama, since the improvements of Akiyama were known to one of ordinary skill in the art and it would have predictably improved similar articles in the same way.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELLEN S. WOOD whose telephone number is (571)270-3450. The examiner can normally be reached on M-F 730-5 with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ELLEN S WOOD/
Examiner, Art Unit 1782

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1782